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Letter dated 10 March 2009 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith a letter addressed to you from Mr. Hoshyar Zebari, Minister for Foreign Affairs of the Republic of Iraq, regarding paragraph 5 of Security Council resolution 1859 (2008) (see annex).

I have further the honour to request that the present letter be circulated as a document of the Security Council.

(*Signed*) T. Hamid **Al Bayati**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

09-26689 (E) 130309 160309

Annex to the letter dated 10 March 2009 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council

[Original: Arabic]

Pursuant to Security Council resolution 1859 (2008), paragraph 5, it is expected that the Secretary-General will report, after consultations with Iraq, on facts relevant to consideration by the Council of actions necessary for Iraq to achieve international standing equal to that which it held prior to the adoption of resolutions pertaining specifically to Iraq. Having reviewed all such resolutions from resolution 661 (1990) onwards, we find that Iraq has complied with all the obligations contained therein, and that only three files remain which, with bilateral cooperation, may be dealt with and closed. Those files concern Kuwaiti missing persons and property, maintenance of boundary pillars, and compensation. Against that background, I have the honour to place before the Council the facts relating to Iraq's cooperation in closing those files.

Firstly, it should be stressed that the collapse in 2003 of the previous regime presented new realities, foremost among which was Iraq's new determination to work with and show the greatest responsibility and respect for international legitimacy, and to implement Security Council resolutions relating to the situation between Iraq and Kuwait. Ever since that time, the actions and policies of successive Iraqi Governments have aspired to demonstrate their intention to uphold the obligations that became incumbent on Iraq under those resolutions. Similarly, not only the new laws and Constitution of Iraq, but the country's letters and addresses to the Council and the United Nations Secretary-General have consistently reinforced that fact.

With respect to missing persons and property, we are pleased to refer to your letter dated 26 March 2008 addressed to the Secretary-General, which contained a request from the Security Council for the submission of a comprehensive report 12 months after the appointment of the High-Level Coordinator on missing Kuwaiti and third country nationals and property issues. The report should contain full information on and an evaluation of the progress that has been made during that period, and include the conditions that will have to be met and a timetable for the completion of the mandate. On that basis, the report should be submitted in April 2009.

As is well known, immediately after the fall of the previous regime, a team of Kuwaiti security officers, in coordination with coalition forces, made enquiries into the fate of the missing Kuwaiti persons. The Coalition Provisional Authority (CPA), with the support of the relevant Iraqi administrative agencies at the time, participated in those endeavours.

Ever since the first Iraqi Government replaced CPA, it has coordinated and cooperated with fraternal Kuwait over matters of mutual interest, which include the fate of missing Kuwaiti persons and property. A number of measures have been taken with a view to increasing the prospects of uncovering that fate. The names and pictures of missing persons whose remains have yet to be discovered have been circulated in the media, and citizens have been asked to provide the relevant Iraqi authorities with any information which may have a bearing on the issue. All ministries have been instructed to continue the search for documents that may

belong to the Kuwaiti National Archives, and the High-Level Coordinator was informed to that effect in our letter to him dated 9 March 2005. As a result of that cooperation, graves that were suspected of containing the mortal remains of Kuwaiti persons were uncovered, and Kuwaiti technical teams were invited to visit those sites and convey the remains to Kuwait in order to verify their identity. A further outcome of that cooperation was our success in learning the fate of 236 of a total of 605 missing persons, most of whom were Kuwaiti nationals, while a few others were from third countries. Such a satisfactory outcome would not have been possible without the cooperation of Iraq. That cooperation also improved and reinforced working methods: on many occasions, under the supervision of the National Committee of the Red Cross, Iraq took samples of remains from burial sites and submitted them to Kuwait, thereby obviating the need for the Kuwaiti teams to travel to the sites. It is expected that further progress will be made in discovering the remains of missing persons now that Iraq has informed Kuwait of the possibility of identifying burial sites in Ramadi, which could contain the remains of more than 12 Kuwaiti prisoners. The relevant Iraqi authorities will attempt to remove the corpses and return the remains to Kuwait, or Kuwait may authorize a technical mission to Iraq for that purpose. In that context, we welcome the desire of the pertinent Kuwaiti authorities to resume in 2009 their investigation into the fate of the missing persons, in coordination with the relevant Iraqi authorities. They will receive full cooperation from the Iraqi side.

The action that Iraq is taking with a view to investigating the whereabouts of Kuwaiti property is akin to its approach to the fate of Kuwaiti missing persons. Whenever the Iraqi Government finds any property that belongs to Kuwait, it gives notice to that effect and hands over the property to Kuwait. On 28 April 2004, Iraq informed the High-Level Coordinator of the recovery of 3,200 books that belonged to the library of the Kuwaiti National Assembly, and on 31 August 2004, we addressed a letter to the High-Level Coordinator in which we advised him of the discovery of metal crates containing valuable books that were the property of Kuwait. That property was handed over to Kuwait on 22 November 2004 at Kuwait International Airport by a delegation from the Ministry of Foreign Affairs of Iraq. On 25 May 2006, the engine of a Boeing 747 and spare parts that were found on Iraqi planes stationed in Tunisian airports were handed over to the Kuwaiti Government. At the suggestion of the High-Level Coordinator, a joint Iraqi-Kuwaiti delegation was formed with a view to making enquiries about other Kuwaiti spare parts on Iraqi aircraft stationed in Amman airport. In the view of the Coordinator, the joint delegation was the ideal approach to efforts aimed at restoring Kuwaiti property. On 2 March 2009, Iraq also returned to Kuwait the tapes of radio and television recordings. We are continuing in the same direction. In both the letters referred to above, we expressed the genuine desire of Iraq to demonstrate its good intentions and close the files relating to Kuwaiti missing persons and property. We appreciated the opportunity to meet the High-Level Coordinator, Mr. Gennady Tarasov, in Baghdad when he visited Iraq from 12 to 15 November 2008 and met senior Iraqi officials, who assured him that Iraq wished to bring his mandate to an end as quickly as feasible.

Iraq has exerted every possible effort towards bringing this humanitarian suffering to an end and has demonstrated and will continue to demonstrate its good intentions and bona fides. At the same time, however, we cannot accept that the mandate of the High-Level Coordinator is open-ended and that the Security Council

remains seized of this file. The Government of Iraq believes that the time has come to transfer this file from the Security Council and for Iraq and Kuwait to deal with it together, particularly in view of the fact that the mechanisms for bilateral cooperation that came into being subsequent to the fall of the previous regime were both fruitful and constructive, as was attested by the reports of the Secretary-General that were issued during that period. All those reports affirm that the Tripartite Commission represents the best mechanism for action on that file.

The United Nations Secretary-General had intended to end the mandate of the High-Level Coordinator and transfer responsibility for the file on Kuwaiti missing persons and property to Iraq and Kuwait at the end of 2003. Under "Observations" in the thirteenth report of the Secretary-General pursuant to paragraph 14 of resolution 1284 (1999) (S/2003/813), paragraph 39 reads as follows:

> I would strongly encourage continuing collaboration between Iraq and Kuwait within the framework of the Tripartite Commission and ICRC. In the light of the ongoing progress on this issue, the Security Council may wish to consider bringing the Coordinator's mandate to a close when the next report on the repatriation and return of all Kuwaiti and third-country nationals or their remains, and on the return of all Kuwaiti property, including archives, seized by Iraq, is submitted in December [2003].

In the statement which the President of the Security Council made to the press after the Council had completed its consideration of the report of the Secretary-General, he mentioned that Security Council members had taken note of the recommendation that the next report of the Secretary-General, which was due in December 2003, should be the last, and were hopeful that it would be possible to resolve all the pending issues by that time. On the basis of the observations made in the aforementioned report of the Secretary-General, it would appear that the date envisaged there for bringing the Coordinator's mandate to a close has been greatly delayed.

We would therefore like to end the Coordinator's mandate, and hope that the forthcoming report of the Secretary-General will be the last which he will submit to the Security Council on this issue. We should also like to affirm that the ending of that mandate will not in any way affect the continuing cooperation of Iraq on either the bilateral level with Kuwait or in the framework of the work of the Tripartite Commission.

With respect to the maintenance of boundary pillars, pursuant to Security Council resolution 687 (1991), the Iraq-Kuwait Boundary Demarcation Commission took the technical measures necessary to demarcate the boundary. Between 1991 and 1994, 106 pillars were put in place, in addition to 28 border markers. The Commission recommended that the pillars should be inspected annually and that Iraq and Kuwait should share maintenance costs. Until March 2003, the United Nations Iraq-Kuwait Observation Mission carried out the maintenance of the pillars. That responsibility was then assumed by the United Nations Department of Peacekeeping Operations (DPKO). The Secretary-General proposed that a project to maintain the border pillars should be instituted, financed by a joint Iraqi-Kuwaiti trust fund. A team therefore visited the border area from 4 to 24 February 2006 with a view to evaluating needs as the first step in preparation for the project.

The Government of Iraq has fulfilled its financial obligations towards the United Nations trust fund for the maintenance of the border pillars between Iraq and Kuwait, and the final stage of upkeep by the DPKO team should have begun on 15 January 2008. That was not the case, however, because of the difficulty of meeting certain DPKO requirements, including the removal of a small Iraqi building located at pillar No. 105 that protrudes a short distance into Kuwaiti territory, and the preparation of a road parallel to the pillars on the Iraqi side of the border. Maintenance of the pillars has therefore been postponed.

DPKO has proposed an alternative schedule for border pillar maintenance that should begin in September 2009. The Government of Iraq has approved that schedule; the aforementioned small building has been removed; and work has begun on the road parallel to the pillars on the Iraqi side of the border. It is hoped that the final stage of maintenance will be completed within the agreed timetable. That file must then become the joint concern of Iraq and Kuwait, particularly given the fact that Security Council resolution 833 (1993) welcomed the Secretary-General's decision to make the necessary arrangements for the maintenance of the physical representation of the boundary, as recommended by the United Nations Iraq-Kuwait Boundary Demarcation Commission, until other technical arrangements were established between Iraq and Kuwait for that purpose.

Some Iraqi citizens have suffered losses as the result of the demarcation of the Iraq-Kuwait boundary, because a number of Iraqi-owned buildings and farms are now on the Kuwaiti side of the border. In order to compensate them, the United Nations has established a fund that is financed by Kuwait. The monies and interest accruing thereon remain in the fund and will be disbursed to the farmers once the Iraqi town that has been designated for them near the Iraq-Kuwait border has been established. Kuwait has undertaken to build that town in the Umm Qasr area. Kuwait has submitted the plans for the town and the plans of the buildings that will be constructed there.

With respect to the issue of compensation, our position is clear. We wish to annul all remaining claims, in view of the fact that Iraq has paid a high proportion of compensation claims throughout the years following the second Gulf war, to the present day. The issue has been raised more than once with fraternal Kuwait, most recently during the meeting that was held on 21 January 2009 between the President of the Republic of Iraq and His Highness the Emir of Kuwait. At the sixty-fifth session of the United Nations Compensation Commission, it was agreed that negotiations would begin between Iraq and Kuwait, under the auspices of the Commission, with a view to reaching a settlement on that issue. In any case, we expect the Security Council to give serious consideration to the matter of reducing the level of deductions to 1 per cent of Iraqi oil revenue. The financial crisis that is currently devastating the world has severely damaged the fragile economy of Iraq and the whole reconstruction operation.

The foregoing provides conclusive proof that we are eager to fulfil our obligations and are working in a serious and responsible fashion towards the closure of all the Security Council files on Iraq. In fact, the only outstanding files are those on Kuwaiti missing persons and property and compensation, and we hope to transfer those to be dealt with as part of the bilateral relations between Iraq and Kuwait. If we can achieve that, it will help Iraq to finally break free of the restraints and mechanisms that have been imposed on it under Security Council resolutions that

were adopted pursuant to Chapter VII of the Charter of the United Nations, and that have impeded its peaceful and full return as an effective and responsible member of the family of nations.

We hope that the United Nations Secretary-General and the Security Council will take our point of view into consideration.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Hoshyar **Zebari**
Minister for Foreign Affairs

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Security Council

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6 March 2009

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Letter dated 6 March 2009 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council

In my capacity as the Representative of the current Chairman of the African Union, I have the honour to refer to the decision (PSC/PR/Comm(CLXXV)) (see annex) on the ruling of Pre-Trial Chamber I of the International Criminal Court to issue an arrest warrant against the President of the Republic of the Sudan, Omar Hassan Al Bashir, which was adopted by the Peace and Security Council of the African Union at its 175th meeting, on 5 March 2009, in Addis Ababa.

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Ibrahim O. **Dabbashi**
Ambassador
Chargé d'affaires a.i.
Representative of the current Chairman of the African Union

09-26733 (E) 130309

Annex to the letter dated 6 March 2009 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council

[Original: English/French]

Communiqué of the 175th meeting of the Peace and Security Council

The Peace and Security Council of the African Union (AU), at its 175th meeting held on 5 March 2009, adopted the following decision on the ruling of Pre-Trial Chamber I of the International Criminal Court (ICC) to issue an arrest warrant against the President of the Republic of the Sudan, Mr. Omar Hassan Al Bashir:

Council,

1. *Recalls* communiqué PSC/MIN/Comm(CXLII) Rev.1 adopted at its 142nd meeting held on 21 July 2008, as well as decision Assembly/AU/Dec.221 (XII) adopted by the Assembly of the Union at its 12th Ordinary Session held in Addis Ababa from 1 to 3 February 2009;

2. *Expresses deep concern* over the decision taken by Pre-Trial Chamber I of the ICC on 4 March 2009, to issue an arrest warrant against the President of the Republic of the Sudan, Mr. Omar Hassan Al Bashir, for war crimes and crimes against humanity, and the far-reaching consequences of this decision. Council *notes with regret* that this decision comes at a critical juncture in the process to promote lasting peace, reconciliation and democratic governance in the Sudan, and *underlines* that the search for justice should be pursued in a way that does not impede or jeopardize the promotion of peace;

3. *Urges* the Sudanese authorities to continue to exercise utmost restraint, uphold all the international obligations of the Sudan and display continued commitment to the search for peace and stability in Darfur and in the Sudan as a whole. Council *appeals* to all Sudanese parties to renew their commitment to refrain from any action likely to further complicate the situation and extend full cooperation to the efforts aimed at promoting lasting peace and reconciliation in the Sudan;

4. *Reaffirms* the AU's conviction that the process initiative by the ICC and the decision of the Pre-Trial Chamber have the potential to seriously undermine the ongoing efforts to address the many pressing peace and security challenges facing the Sudan and may lead to further suffering for the people of the Sudan and greater destabilization of the country and the region;

5. *Deeply regrets* that, despite the risks posed by the ongoing ICC process to the search for lasting peace and stability in the Sudan and in the region, the United Nations Security Council has failed to consider with the required attention the request made by the AU to implement the provisions of article 16 of the ICC Statute;

6. *Appeals once again* to the United Nations Security Council to assume its responsibilities by deferring the process initiated by the ICC, and *reiterates* the AU's determination to continue to do whatever is in its power to mobilize the necessary support;

7. *Requests* the Chairperson of the Commission, in line with the above-mentioned decision of the Assembly of the Union, to urgently take all the steps required to dispatch a high-level delegation to New York to directly engage the Security Council. Council *welcomes* the steps being taken by the Commission to convene, as soon as possible, the proposed meeting of the African State parties to the Rome Statute, as envisaged in decision Assembly/AU/Dec.221 (XII), to exchange views on the work of the ICC in relation to Africa, in particular in the light of the processes initiated against African personalities, and to submit recommendations thereon, taking into account all relevant elements;

8. *Takes note* of the decision adopted by the Council of the League of Arab States meeting at the ministerial level in Cairo, on 4 March 2008, and *requests* the Chairperson of the Commission to continue to work closely with the League of Arab States and other AU partners in order to mobilize maximum support for the AU's position;

9. *Reiterates* AU's unflinching commitment to combating impunity, in line with the relevant provisions of the Constitutive Act, and its strong condemnation of the gross violations of human rights in Darfur. In this respect, Council *welcomes* the steps being taken by the Commission towards the launching of the High-Level Panel established by decision PSC/MIN/Comm(CXLII) Rev.1, to examine the situation in depth and submit recommendations on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed. Council *further welcomes* the acceptance by former President Thabo Mbeki of South Africa to chair this Panel;

10. *Reiterates* the call by various AU organs for the Government of the Sudan to take immediate and concrete steps to investigate and bring to justice the perpetrators of human rights abuses;

11. *Decides* to remain seized of the matter.